

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	8:09CR457
Plaintiff,)	
)	POSITION OF THE UNITED STATES
vs.)	REGARDING PENDING MOTIONS
)	
SHANNON WILLIAMS,)	
)	
Defendant.)	

INTRODUCTION

The United States has reviewed the filings in this case since the jury returned its verdict in April of 2011. The Court has set a hearing for September 30, 2011. The order doing so was entered on September 20, 2011, and only referred to the outstanding motions reflected at Filing Nos. 1037, 1038, and 1042. Beginning on September 19, 2011, the defendant has filed a number of other motions or documents which could be construed as motions. What follows is the position of the United States on the various outstanding motions.

BACKGROUND

Once Mr. Tasset was reappointed in early May, things proceeded fairly smoothly, although defendant persisted in filing his own motions. The Court dealt with those motions expeditiously. However, issues became more complicated on August 15, 2011, when Mr. Tasset filed his motion to withdraw (Filing No. 995) and the clerk filed Mr. Williams' motion to proceed pro se (Filing No. 1028) which had apparently been written by Mr. Williams on August 10, 2011. A hearing was held on August 25, 2011. Although the text entry for this date reflects that the hearing was only on Mr. Tasset's motion to withdraw, all will remember that the defendant's motion to proceed pro se was also at issue. The record will reflect that the defendant

said he was orally withdrawing that motion and that he affirmatively requested counsel and specifically requested Mr. Tasset as his counsel. Nevertheless, the Court granted the defendant's motion to proceed pro se on August 30, 2011 (Filing No. 1030). Mr. Tasset was allowed to withdraw and Donald Schense entered his appearance as standby counsel on September 1, 2011 (Filing No. 1033). As of this last date, the only motion outstanding was a motion of the United States regarding payment of funds (Filing No. 1023).

The United States was concerned that the defendant had intentionally and seriously created an appellate issue at the hearing on August 25, 2011, when he said he was withdrawing his motion to proceed pro se and expressly asked for counsel. The United States expressed this concern in Filing No. 1040 on September 14, 2011. That filing was generated by the defendant's pro se filing denominated Motion for Assistance of Counsel prepared on September 7, 2011, and filed by the clerk on September 9, 2011. The relief sought by this motion seems to be that Mr. Williams wanted the Court to direct Mr. Schense to file the pro se motions Mr. Williams was preparing. This is one of the motions set for hearing on September 30, 2011. However, the United States suggests that the issue raised by the motion is moot since there have been many pro se motions by Mr. Williams received by the clerk and filed by the clerk since September 9, 2011.

POSITION OF UNITED STATES RE: MOTIONS FOR TRANSCRIPTS (FILING NO. 1038 AND 1042)

In these motions Mr. Williams suggests that Susan DeVetter, the court reporter who recorded the trial herein, has somehow edited the transcripts of the trial. The only response the United States has to this allegation is that there is no basis for it whatsoever. The United States is confident that Ms. DeVetter has faithfully and conscientiously performed her duties as court

reporter in this matter. Beyond that, the United States is at a loss as to what it could offer on these motions at the hearing on September 30, 2011.

**POSITION OF UNITED STATES ON MOTION FOR ASSISTANCE OF COUNSEL
(FILING NO. 1037)**

As noted, this motion is, in the mind of the United States, moot. However, it was the motion that caused the government to file its response (Filing No. 1040) which asks that the matter of Mr. Williams' representation be resolved by an on-the-record unequivocal request by the defendant to proceed pro se.

**POSITION OF UNITED STATES ON MOTION FOR CLARIFICATION OF
ASSISTANCE OF COUNSEL (FILING NO. 1043) AND MOTION TO WITHDRAW
MOTION FOR ASSISTANCE OF COUNSEL (FILING NO. 1045)**

Mr. Williams quickly eliminated a need for any unequivocal request because in Filing No. 1043 Mr. Williams asserted the following:

I only want assistance in the filing of motions, subpoenaing witnesses, etc. I do not trust Donald Schense, especially if he is the government's choice to represent me. Don't change my motion, I'll go pro se. As is my right I'll proceed pro se. I sincerely believe there is something wrong if all of a sudden I'm forced to take Donald Schense.

In Filing No. 1045 the defendant wrote the following:

I will proceed pro se. I do not want Donald Schense to represent me. . . . I will not even talk to Mr. Schense. I will proceed as my own attorney in the style of Faretta. Unequivocally I want to proceed pro se. I will not assist Mr. Schense.

Although the defendant began Filing No. 1045 with the assertion that he was withdrawing his "motion for assistance of counsel (Filing No. 1028)," the United States suggests that the defendant denominated the wrong filing number inasmuch as Filing No. 1028 was his motion to proceed pro se. The government suggests that he was referring instead to Filing No. 1037 which had been filed on September 9, 2011.

To summarize the government's position on the defendant's filings 1043 and 1045, the United States urges the Court to grant them, specifically allowing Mr. Williams to proceed without standby counsel since he does not want the one appointed by the Court. However, there must be some mechanism for Mr. Williams to file his pro se motions, and the United States leaves it to the discretion of the Court to fashion such a mechanism. It appears to the United States that the hearing previously set for September 30, 2011, on defendant's Filing No. 1037 affords the chance to solve the question of the mechanism for how Mr. Williams' pro se motions get filed.

GOVERNMENT'S POSITION REGARDING MOTION TO PRODUCE (FILING NO. 1046), MOTION TO DISQUALIFY (FILING NO. 1048), OBJECTION TO TRANSCRIPT (FILING NO. 1051), SUBPOENA DUCES TECUM (FILING NO. 1054) AND MOTION FOR NEW TRIAL (FILING NO. 1056)

The defendant's motion to produce (Filing No. 1046) seeks various items. All of the items sought and their production were litigated during the trial of this case. The United States suggests that this motion is moot by virtue of the fact that what it seeks was addressed during the course of trial.

The position of the United States on the motion to disqualify (Filing No. 1048) is simply that that motion is left to the Court's sound discretion. The Court has previously ruled on similar motions in this case. The position of the United States is that the trial court has exhibited extreme patience and judicial fairness in presiding over this almost two year old case.

The defendant has filed an objection to the transcript in which he asks that the trial transcript be "corrected." (Filing No. 1051). While denominated as an objection, it should be construed as a motion and overruled because there is no showing that the court reporter herein has tampered with the transcript in any way. The subpoena duces tecum for audio file (Filing

No. 1054) should also be construed as a motion and overruled as moot as a similar motion was overruled several months ago in Filing No. 912.

Finally, defendant's motion for new trial (Filing No. 1056) should be overruled as untimely under Federal Rule of Criminal Procedure 33.

CONCLUSION

The above intends to set out the position of the United States on all matters raised in the various filings of Mr. Williams and not yet ruled on. Should the Court require any further submission on any issue, the United States stands ready to provide the same as soon as directed.

Respectfully submitted,

UNITED STATES OF AMERICA,
Plaintiff

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on September 26, 2011, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following CM/ECF participant(s): Donald L. Schense.

I further certify that a true and correct copy of the foregoing was delivered to the following non CM/ECF participant by placing same in the U.S. Mail, properly addressed and postage prepaid:

Shannon Williams
Pottawattamie County Jail
1400 Big Lake Road
Council Bluffs, IA 51501

s/Robert C. Sigler
ROBERT C. SIGLER
Assistant United States Attorney